

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

_____)	
UNITED STATES OF AMERICA)	
)	
v.)	Criminal No:
)	
EXOLON-ESK COMPANY AND)	Violation:
WILLIAM H. NEHILL,)	18 U.S.C. § 1001
)	(False Statements)
Defendants.)	
_____)	

INDICTMENT

May 1995 Term -- At Alexandria, Virginia

THE GRAND JURY CHARGES THAT:

I.

INTRODUCTION

1. At all times material to this Indictment, the defendant Exolon-ESK Company ("Exolon") was organized and existed under the laws of the State of Delaware, had its principal place of business in Tonawanda, New York, and was engaged in the manufacture and sale of artificial abrasive grain, including aluminum oxide, throughout the United States.

2. At all times material to this Indictment, the defendant William H. Nehill ("Nehill") was Executive Vice President and Treasurer of Exolon.

3. Whenever in this Indictment reference is made to any act, deed, or transaction of a corporation, the allegation means that the corporation engaged in the act, deed, or transaction

by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

II.

DESCRIPTION OF THE OFFENSE

4. On or about October 21, 1994, the defendants Exolon and Nehill knowingly and willfully made and caused to be made a false, fictitious and fraudulent statement and entry as to a material fact, in matters within the jurisdiction of the Defense Logistics Agency ("DLA") of the Department of Defense, an agency of the United States.

5. This false, fictitious and fraudulent statement and entry was contained in the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters which was incorporated into, and formed part of, Exolon's bid to the DLA on Solicitation No. DLA-MIN-046 for the purchase of aluminum oxide fused crude. This six-page bid was signed by defendant Nehill on behalf of defendant Exolon. The Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters stated, in part:

a. (1) The Offeror certifies, to the best of its knowledge and belief, that -

(i) The Offeror and/or any of its Principals -

(C) Are (___) are not (___) presently indicted for, or otherwise criminally or civilly charge[d] by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

Subdivision (a)(1)(i)(B) lists, in pertinent part, the following offenses:

. . . commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statu[t]es relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery,

falsification or destruction of records, making false statements, or receiving stolen property.

6. Defendants willfully submitted this bid to the DLA with the certification that Exolon and its principals "are not" under indictment for any of the listed offenses, knowing the same to be false, fictitious, and fraudulent. In truth and fact, as the defendants knew, one of defendant Exolon's principals, defendant Nehill, was indicted by a federal grand jury in the Western District of New York on February 11, 1994, for obstructing the due administration of justice by destroying records responsive to a grand jury subpoena duces tecum in violation of 18 U.S.C. § 1503, and for making false declarations under oath in violation of 18 U.S.C. § 1621.

7. The false, fictitious and fraudulent statement and entry charged in this indictment was material to matters within the jurisdiction of the DLA and other agencies of the United States.

III.

JURISDICTION AND VENUE

8. The false, fictitious and fraudulent statement and entry charged in this Indictment was sent by Exolon to a DLA office in the Eastern District of Virginia, and was received and relied on by the DLA in awarding Exolon a purchase contract, in the Eastern District of Virginia.

In violation of Title 18, United States Code, Section 1001.

Dated this ____ day of _____, 1995.

A TRUE BILL

FOREPERSON

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